Jefferson Smurfit Corporation, Fernandina Mill Division *and* International Brotherhood of Electrical Workers, Local Union No. 177, AFL–CIO. Case 12–CA–18685

July 21, 2000

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

On October 14, 1997, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

On March 14, 1997, the Union met with the Respondent and presented a letter stating that the Union had a card majority and requesting recognition for a residual unit. The letter stated that if the Respondent had any doubt about majority status, the Union was prepared to offer the cards "now" for the Respondent's inspection. These statements were reiterated orally at the meeting. The Respondent's employee relations manager read the letter, examined the cards and made copies of them. He then told the Union that he would have to consult with counsel. Later that day the Respondent refused to recognize the Union for the requested unit.

The judge found that this conduct violated Section 8(a)(5) of the Act. We disagree. As discussed below, an employer has no obligation to accept a card count as proof of majority status, absent a clear agreement to do so.

In *Linden Lumber,* 190 NLRB 718, 721 (1971), the Board, in a decision upheld by the Supreme Court (418 U.S. 301 (1974)), held that an employer "should not be found guilty of a violation of Section 8(a)(5) solely upon the basis of its refusal to accept evidence of majority status other than the results of a Board election." The Board further stated that, "We repeat for emphasis our reliance here upon the additional fact that the Respondent and the Union never *voluntarily agreed* upon any mutually acceptable and legally permissible means, other than a Board-conducted election, for resolving the issue of union majority status." (Emphasis added.)[1] Here, the Respondent did not expressly consent to permit determination of majority status by a means other than a Board election. The General Counsel argues that the necessary assent is to be inferred from the Respondent's conduct in reading the Union's letter and inspecting the cards proffered. Similarly, the dissent finds that the Respondent representative's act of taking in hand and copying the cards proffered by the Union constituted an agreement to forgo an election.

The decisions of the Board and the Supreme Court do not support these arguments. As noted above, an employer has a right to a Board election to resolve the issue of majority status. Absent a clear agreement to forgo that right, the employer does not violate Section 8(a)(5) by insisting upon an election.[2] In the instant case, Respondent surely did not agree to recognize the Union on the basis of cards. To the contrary, Respondent said that it wished to consult with counsel. Further, in the absence of an affirmative showing as to what examination of the cards would signify, the evidence is insufficient to establish that the Respondent agreed to forgo an election.

Our position is supported by, inter alia, *Nantucket Fish Co*., 309 NLRB 794 (1992). In that case, the evidence of agreement was stronger than that in the instant case. And yet the Board found no clear agreement. The union there presented the employer with a petition signed by the employer's employees and a letter demanding recognition. After the employer had read this material, and was in the presence of counsel, the union expressed its wish to set up dates and bargain about the issues, and asked if the employer "had any problem with that." The employer representative responded, "fine, we'll meet with you, . . . and we'll call you later this afternoon." The employer later declined to recognize the union and expressed doubt as to the union's majority status. The Board, dismissing the complaint, found that the respondent's initial response to the union was too ambiguous to characterize as an agreement to recognize the union. It stated that it would not impose a bargaining relationship on the parties in the absence of a *clear*, *express*, and *unequivocal* statement of agreement to recognize.

We disagree with our dissenting colleague's assertion that *Sullivan Electric Co*., 199 NLRB 809 (1972), enfd. 479 F.2d 1270 (6th Cir.1973), requires a different result. Rather, the Board reiterated in that case "that an employer does not run afoul of the Act solely by refusing to accept evidence of majority status other than the results of a Board election, unless the parties had previously agreed upon a mutually acceptable and legally permissible alternative means of ascertaining such status" (at fn. 1). The Board went on to find such an agreement, but on facts markedly different from those herein. In that case, the employer, after examining the cards, interrogated its employees as to whether they had signed authorization cards. In that manner, it learned that the union did indeed represent a majority of the employees. No such activity is present in this case.[3]

Similarly, *Gregory Chevrolet*, 258 NLRB 233 (1981), is distinguishable. In that case, the employer interrogated the

[1] See also *Wilder Mfg. Co.*, 198 NLRB 998, 999 (1972), reversing on remand 185 NLRB 175 (1970).

[2] *Nantucket Fish Co*., 309 NLRB 794 (1992).

[3] Since *Sullivan* is distinguishable on its facts, Members Hurtgen and Brame do not pass on the validity of that case.

employees about their choosing the union and then unlawfully tried to get them to change their minds.[4]

In sum, we find that there was no agreement by the Respondent to recognize the Union, and we will dismiss the complaint.[5]

ORDER

The complaint is dismissed.

MEMBER FOX, dissenting.

For the following reasons, I would adopt the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize the Union after accepting the Union's invitation to examine the authorization cards signed by a majority of the unit employees.[1]

In *Linden Lumber,* 190 NLRB 718, 721 (1971), the Board, in a decision upheld by the Supreme Court,[2] held that an employer "should not be found guilty of a violation of Section 8(a)(5) solely upon the basis of its refusal to accept evidence of majority status other than the results of a Board election." In other words, an employer faced by a union demanding recognition on the basis of union authorization cards assertedly signed by a majority of the unit the union was seeking to represent, could lawfully refuse to consider that evidence and assert that it would recognize the union only on the basis of a majority established through a valid Board election. Not long thereafter, however, in *Sullivan Electric Co*., 199 NLRB 809 (1972), enfd. 479 F.2d 1270 (6th Cir. 1973), the Board made it clear that an employer seeking to avail itself of its right under *Linden Lumber,* to insist on a Board election may not at the same time pursue other means of determining majority support. In *Sullivan*, after being presented with the union's demand, the employer questioned employees about whether they had signed cards, and learned that at least 11 out of 16 employees had in fact done so. The Board found the employer's subsequent refusal to recognize the union unlawful because "where an employer undertakes a determination which he could have insisted be made by the Board, he may not thereafter repudiate the route that he himself has selected." Id. at 810. Accord: *Research Management Corp*., 302 NLRB 627, 638–639 (1991); *Gregory Chevrolet*, 258 NLRB 233, 239–240 (1981).[3]

In the present case, it is undisputed that Lance House, the Respondent's Employee Relations Manager, upon being presented with the Union's recognitional demand and being offered the cards to prove it, accepted the cards and examined and made copies of them before returning the originals to the Union. The Union did not offer the cards for any reason other than to prove majority support, and there was no legitimate reason for House to accept and examine the cards except to determine if they in fact demonstrated such support. Having undertaken "a determination which [it] could have insisted be made by the Board," the Respondent may not, under the holding of *Sullivan Electric*, now lawfully refuse to recognize the Union. As the Board stated in *Linden Lumber,* an employer does not run afoul of the Act solely by "*refus[ing] to accept* evidence of majority status other than the results of a Board election." 190 NLRB at 721 (emphasis added). Once, however, as here, an employer *has accepted* and examined the cards proffered in support of the Union's recognition demand, it has bound itself to recognize the Union without the necessity of a Board election, if the Union's majority was demonstrated by the offered means. The record shows that the cards did in fact demonstrate the Union's majority status, and I would find that the Respondent violated Section 8(a)(5) and (1) of the Act by subsequently refusing to recognize and bargain with the Union.

I therefore dissent from my colleague's dismissal of the complaint.

Peter J. Salm, Esq., for the General Counsel.
Thomas M. Hanna, Esq., for the Respondent.
John F. Kattman, Esq., for the Charging Party.

BENCH DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This is a refusal to recognize and bargain with case. At the close of a 2-day trial on September 25, 1997, I rendered a Bench Decision in favor of the General Counsel (Government) thereby finding a violation

[4] The cases cited by the Acting General Counsel in support of the claim that the Respondent agreed to recognize the Union are likewise inapposite. See, e.g., *Research Management Corp.*, 302 NLRB 627 (1991) (evidence employer made statements consenting to recognition by card check; employer agreed to card check by neutral third party); *Idaho Pacific Steel Warehouse*, 227 NLRB 326 (1976) (employer agreed to card check by state department of labor which certified majority); *Harding Glass Industries*, 216 NLRB 331 fn. 2 (1975) (employer initiated card check conducted by impartial observer).

[5] The Respondent has excepted to the judge's conclusions that the requested unit was appropriate, to the failure to employ an expanded eligibility formula, and to the failure to find a contract bar. In view of our decision today, it is unnecessary to consider these issues.

[1] I agree with the judge that the unit in which majority support was demonstrated consists of 39 temporary employees called in during shutdowns for maintenance, who meet the standard articulated in *Davison-Paxon Co*., 185 NLRB 21 (1970), i.e., who worked, on average, at least 4 hours per week during the 3 months immediately preceding the date on which the Union requested recognition and the Respondent examined its evidence of majority support. As the judge found, the unit is appropriate as a residual unit since, as shown by the clause excluding the temporary employees from the contract covering permanent employees, the union representing the latter does not seek to represent these temporary employees. *Fleming Foods*, 313 NLRB 948 fn. 1 (1994).

[2] 418 U.S. 301 (1974).

[3] *Nantucket Fish Co*., 309 NLRB 794 (1992), in which the Board declined to find that an employer had a recognitional obligation after examining a union-proffered petition with signatures from a majority of the unit employees, is arguably inconsistent with my analysis. I note, however, that the petition there was given to the employer's trustee in bankruptcy at a hearing in the bankruptcy case, and she read it while sitting at the hearing. This is less easily characterized as embarking on a procedure to determine union majority than what occurred in the present case—the examination and copying of the authorization cards. In any event, to the extent *Nantucket Fish* is inconsistent with my analysis, I would overrule it.

of 29 U.S.C. 158(a)(5) and (1). This certification of that Bench Decision, along with the Order which appears below, triggers the time period for filing an appeal ("Exceptions") to the National Labor Relations Board (Board). I rendered the bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations.

For the reasons stated by me on the record at the close of the trial, I concluded that the following employees of Jefferson Smurfit Corporation, Fernandina Mill Division (Company) constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act, as amended:

> All on call employees, sometimes referred to as temporary employees, employed by the Company in the E & I department at its Fernandina Beach, Florida facility; excluding all other employees, guards and supervisors as defined in the Act.

I concluded the above unit is appropriate as a homogeneous separately identifiable group of employees that no other labor organization seeks to represent and is the only unrepresented employees of the Company. Accordingly, I concluded the above unit is an appropriate residual unit. See, e.g., *S. D. Warren Co.***,** 114 NLRB 410 (1955), and *Eastern Container Corp.,* 275 NLRB 1537 (1985).

I also concluded that a majority (23) of the unit employees on March 14, 1997, designated and selected International Brotherhood of Electrical Workers, Local Union No. 177, AFL–CIO (Union), as their representative for the purposes of collective bargaining with the Company. I concluded there were 39 eligible unit employees for consideration of majority status on that date. I concluded eligibility by applying either of the Board's formula for eligibility outlined in *Davison-Paxon Co.***,** 185 NLRB 21 (1970),[1] and *Marquette General Hospital,* 218 NLRB 713 (1975).[2] Some employees on the Company's more expansive (approximately 60+) on-call list did not meet the requirements of either formula.

It is undisputed the Union on March 14, 1997, requested (both by letter and in person) the Company recognize it as the exclusive bargaining representative of the unit employees and bargain with the Union as their representative. I concluded the Company, by the totality of its actions on March 14, 1997, agreed to recognize the Union if the Union demonstrated by card count it represented a majority of the employees in the unit. I found the Union demonstrated its majority status to Employee Relations Manager Lance House. I found the Company's admitted failure and refusal to thereafter (from March 14, 1997) recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees violated and continues to violate Section 8(a)(5) and (1) of the Act.

I certify the accuracy of the portion of the transcript, as corrected,[3] pages 263 to 275 inclusive, containing my decision, and I attach a copy of that portion of the transcript, as corrected, as "Appendix A."

CONCLUSION OF LAW

Based on the record, I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; that it violated the Act in the particulars and for the reasons stated at the trial and summarized above; and that its violations have affected and, unless permanently enjoined, will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found the Company has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Company unlawfully failed and refused to recognize and bargain with the Union as the exclusive representative of the employees in the unit described elsewhere in this Bench Decision, I recommend the Company be ordered to recognize and bargain with the Union as the exclusive representative of the employees in the described unit. I also recommend the Company be ordered, within 14 days after service by the Region, to post an appropriate notice to employees, copies of which are attached hereto as "Appendix B" for a period of 60 consecutive days in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

[Recommended Order omitted from publication.]

APPENDIX A

BENCH DECISION

[Errors in the transcript have been noted and corrected.]

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Judge Cates: One is that I invite the parries during this 20 minute time that I'm using to outline my decision to see if there's any common ground that you could settle this matter on because you can obviously settle after I've rendered the decision. But it perhaps fixes the parties' positions a little more than it would be now.

And, secondly, let me state that it has been genuinely a pleasure to hear this case. That all counsel have done on outstanding job, and I appreciate that. And the winners or the losers are not based on the quality and caliber of counsel. It's perhaps one of those cases where someone prevails, and someone doesn't. And that happens quite often, I guess, in life.

So with that, we'll take about a 20 minute recess and be back here. Off the record.

(Whereupon, a brief recess was taken.) Judge Cates: Back on the record.

Before I took a recess to outline some notes for rendering the decision herein, I invited the parties to again to attempt to resolve this matter short of a decision. Has there been any fruit in that direction?

Mr. Kattman: No, Your Honor.

Judge Cates: Very well. This is my decision: the charge underlying this proceeding was filed by the Union on March 20, 1997 and thereafter served on the Company. At all

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times material herein the Company has been and is a Delaware corporation with an office and place of business located in Fernan-

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[1] The Board in *Davison-Paxon Co.* held that any temporary (or on-call) employee "who averages 4 hours or more per week for the last quarter prior to the eligibility date [March 14, 1997 herein] has a sufficient community of interest for inclusion in the unit." The Board continues to utilize the *Davison-Paxon Co.* formula. See, e.g., *Five Hospital Homebound Elderly Program***,** 323 NLRB 441 (1997).

[2] The Board in *Marquette General Hospital,* held "employees who have worked a minimum of 120 hours in either of the two 3-month periods immediately preceding the date shall be eligible."

[3] I have corrected the transcript by making physical inserts, crossouts, and other obvious devices to conform to my intended words, without regard to what I may have actually said in the passages in question.

dina Beach, Florida, where it is engaged in the manufacture and non-retail sale of craft paper.

During the past year, the Company, in conducting its business operations, sold and shipped from its Fernandina Beach, Florida facility goods valued in excess of $50,000 directly to points outside the State of Florida. The evidence indicates the parties admit—and I find—that the company is an employer engaged in commerce within the meaning of Section (2)(2) (6) and (7) of the Act.

I find that the International Brotherhood of Electrical Workers, Local Union No. 177, AFL–CIO is a labor organization within the meaning of section 2(5) of the Act. I find that Warren Flennikin, spelled F-l-e-n-n-i-k-i-n, is the general manager and Lance House, spelled H-o-u-s-e, is the employee relations manager of the company. And that both are supervisors and agents of the company within the meaning of section 2(11) and 2(13) of the Act.

As to whether or not the unit alleged in paragraph five of the complaint, which reads as follows:

All on-call employees, sometimes referred to as temporary employees, employed by respondent in the E and I department at its Fernandina Beach, Florida facility excluding all other employees, guards and supervisors as defined in the Act

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constitutes an appropriate unit.

First I shall look at what the temporary employees are utilized for.

It appears that based on the testimony of employee relations-manager House that the temporary employees are utilized during maintenance shutdown periods, which happens approximately 10 to 14 days per year and sometimes maybe happening twice during a year.

The temporary employees are also utilized when permanent employees in the E and I department are away from work for workman's comp, situations, sicknesses, safety projects, projects that need to be done rapidly and matters closely related thereto.

It appears that the temporary employees have a community of interest common to each other—that is the temporary employees are performing tasks of a like nature when they are working for the company. Are they, as contended by the General Counsel, separate appropriate residual unit? I find they are. They are a homogeneous unit that is separate from any other unit.

I note in that respect that the Company has approximately 300 employees that are represented by the United Paperworkers Union. I believe it is Local 415. But be that as it may, the Company has about 100 machinists that are represented by the machinist union. They have about 42 power employees who are

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represented by IBEW Local 201A and then IBEW Local 1924 represents, without question, the electrical and instrument permanent employees, which number approximately 55.

The Company also employs a group of individuals as managers, environmental employees, office clerical employees, process control employees, engineers, vibration analysis employees and others. That management group and support thereto are not represented by a union.

And there are no hourly employees of a permanent and regular basis, as I understand it, that are not represented by a union. So the unit that the government contends appropriate in paragraph 5 appears, as contended by counsel for the General Counsel, to be an appropriate residual unit.

Furthermore, there's no evidence in this record that any other labor organization seeks to represent this group of employees.

Therefore, I conclude and find that the unit that I have described into the record and that is set forth at paragraph five of the complaint is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of 21 the Act.

Did a majority of the employees in that unit designate and select the union as their collective bargaining representative on or about March 14, 1997? One has to decide what constitutes the list or number of employees composing that unit before you

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can ascertain if a majority of the individuals selected the union as their designated bargaining representative. I note that on the date in question, which is March 14, 1997, that there were 29 temporary employees employed in the E and I department. And I believe that came in by way of stipulation in the record.

At least of the 29 that were on that day, 23 of them signed valid union signature cards. Now when I say valid union signature cards, there's been no issue made in this proceeding, no evidence presented, that any of the cards where in any way invalid or not for the purpose reflected on the card. That is, to designate the union as their collective bargaining representative.

What constitutes the unit or the list of employees from which I must ascertain if a majority has been arrived at. Is it the 61 or so contended by the Company, or the 38 or 39 contended by the government? I am persuaded the law is pretty clear on this issue. And using the least expansive holding, to be part of the list of employees from which it would be determined whether or not the union had a majority, I find the total number is approximately 39.

And based on the less expansive guideline an individual, to be considered among those on the list must have worked an average of four hours or more per week during the three months immediately preceding the date in question. And the date in question in this particular case is March 14, 1997.

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If I applied—one of the other formulas of the Board where I looked back for employees that work 120 hours for two quarters, the list would still be approximately 39. Those 39 individuals that, in my opinion, compose the—or comprise—the list which it must be determined if a majority selected the Union were Debra C. Barr, B-a-r-r; William F**.** Brooks, B-r-o-o-k-s; Randall V. Carter, C-a-r-t-e-r, John Z. Cooper, C-o-o-p-e-r; Charles M. Cunningham, C-u-n-n-i-n-g-h-a-m; John E. Currin, C-u-r-r-i-n; Charles B. Fresh, F-r-e-s-h; Jack M. Fugate, F-u-g-a-t-e, Jr.; James L. Fugate, F-u-g-a-t-e; Darrell Y. Gamble, G-a-m-b-l-e; James L. Goforth, G-o-f-o-r-t-h; Charles L. Gregory, G-r-e-g-o-r-y, Jr.; Charles P. Hogg, H-o-g-g; Carl E. Lee, L-e-e; William A. Manning, M-a-n-n-i-n-g; George C. Mazoch, M-a-z-o-c-h; Allison B. Nungester, N-u-n-g-e-s-t-e-r; Russell W. Orr, O-r-r; James A. Peeples, P-e-e-p-l-e-s; Barry R. Powell, P-o-w-e-l-l; C.V. Rupert, R-u-p-e-r-t; Edward W. Senkus; S-e-n-k-u-s; Robert W. Siegler, S-i-e-g-l-e-r; Brenda J. Silva, S-i-l-v-a; John A. Simone, S-i-m-o-n-e; Robert Tesori, T-e-s-o-r-i Jr.; Jerry D. Thomas, T-h-o-m-a-s; Thomas W. Townsend, T-o-w-n-s-e-n-d; James L. Tucker, T-u-c-k-e-r; David L. West, W-e-s-t; Camell, C-a-m-e-l-l, D. Williams; James Fugate, F-u-g-a-t-e; James Hurley, H-u-r-l-e-y; Fred Milheim, M-i-1-h-e-i-m; J. Bellinger, B-e-l-l-i-n-g-e-r; M. Harrison, H-a-r-r-i-s-o-n; G. Liddy, L-i-b-b-y—that should be Libby, L-i-b-b-y—Steve Ray, R-a-y; and Charles White, W-h-i-t-e.

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You may note that I have included Mr. James L. Fugate, F-u-g-a-t-e, in that list without being absolutely clear that he met the most

restrictive requirements for being eligible to be included in the number of those that, I would consider whether the Union had a majority or not. It is harmless to include him because the union, I find, had a majority of those individuals on March 14, 1997, with or without James L. Fugate.

The majority was composed of James L. Goforth, Debra Barr, William Brooks, Randy Caster, John Cooper, John Currin, Darrell Gamble, Charles Hogg, Carl Lee, W.A. Manning, George Mazoch, Russell Orr, Barry Howell, Edward S-e-n-k-u-s—

I think is the correct spelling—Robert Siegler, John Simone, Bob Tesori, Thomas Townsend, James Tucker, Camell Williams, Mitchell Cunningham, C.V. Rupert, and David West.

Did the union request representation by the Company for the employees in this unit? The answer is yes. Local 177 business agent and financial secretary Robert Williams testified that on March 14 when the union met with Mr. Flennikin and Mr. House the union demanded recognition.

Assistant business agent Eddie Dedmon testified that the union asked would they recognize the union. A letter was also presented to the Company at that time, which the testimony indicates Mr.—correction—employer relations House received.

The letter in pertinent part, which is General Counsel's

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Exhibit 3, asked for recognition, which is set forth at paragraph two of that letter, "We are requesting immediate recognition of the local union as the collective bargaining agent of your employees for the purposes of negotiating an agreement for wages, hours and working conditions." So I find that a demand was made for recognition.

Did the Company agree by its actions or otherwise to recognize the union as the representative of the employees in question? I'm persuaded the answer to that question is yes. It is undisputed that the union representatives met with the management officials and that the union's individuals informed the Company that they had a majority of the employees signed up. They presented the Company with a demand letter. The demand letter, among other things reads: "In the event you have any doubt as to whether the IBEW represents a majority of your temporary E and I employees, we're willing to present the authorization cards to you now for your inspection."

The evidence is clear that Mr. House took the cards and examined the cards, made copies of the cards and then returned the originals to the union.

IBEW local union 177 assistant business agent Dedmon, D-e-d-m-o-n, testified that Mr. House, upon being presented the cards, examined the cards. I am persuaded there is no other conclusion that can be drawn from the record evidence other than that the Company through employee relation's manager House upon

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being faced with a demand—examining the cards, copying the cards—by his actions, we agreed, on behalf of the Company, to recognize the union as collective bargaining representative of the employees in the unit that I have made reference to.

Does the collective bargaining agreement between Local union 1924 cover the temporary employees and act as a bar to the unfair labor practice allegations herein? That is, if the employees are already covered by a collective bargaining agreement, the unfair labor practice herein would fail. I find there is no contract bar. And I base that on a number of factors.

Number one, there is no mention in the recognition clause of the agreement between the Company and Local 1924 as to the temporary call-in employees.

Secondly, according to the credited testimony of president and business manager—or business agent—Chandler of Local 1924, the Company has taken the position that the temporary employees are not part of the collective bargaining agreement covered between the Company and Local 1924.

Further, the only mention of applicability of temporary employees in the contract between the Company and Local 1924, which is General Counsel's Exhibit 2, appears on page 38 of the agreement where they are excluded. And I shall read that exclusion into the record, quote, "This overtime agreement does not apply to probationary or temporary employees. "I find there

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is no contract bar.

Next I find it necessary to address certain other of the defenses that the Company has raised. The Company contends that if they are ordered to bargain with Local 177 on behalf of the temporary employees, that such has the potential of creating unrest or instability in the workplace and among the work force. I find such an invalid defense when weighed against the right of the employees in the group of temporary employees to self-determination as to whether they wish to be represented by a union for collective bargaining purposes regarding wages, hours and other terms and conditions of employment. So I find that defense to be without merit.

The Company raises another, but somewhat related defense, in that if it is ordered to bargain with Local 177 on behalf of the temporary employees, it may then be put in the position of negotiating with one local of the IBEW for terms and conditions that would be detrimental to the other local and vice versa. Such I find is the reality of the workplace and labor relations. The mere fact that one local may be negotiating on behalf of employees to their benefit and another unit's detriment is just the reality of the workplace. So I find that defense to be without merit.

The Company also contends that local union 1924 has, whether included in the contract or not, been representing the temporary employees. In that it has filed grievances—some of

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which are presented in the record both by the General Counsel and by the Company—where the union is contending that these temporary employees have worked sufficient elements of time to be made permanent employees.

My view of those grievances is that local union 1924 is simply pursuing the grievances on behalf of individuals that it contends has met the requirements to be included in the unit that it represents. That is, they have passed from the temporary status to the status of permanent employees.

And, therefore, would be in the unit that Local 1924 represents and as such, the Union is not representing the temporary employees when it advances these grievances, but rather is representing potential members of the unit that it is recognized to bargain on behalf. So I find that defense of the Company is without merit.

Finally, I note that no party contends that this is an accretion type case, nor has an accretion issue been litigated before me. In summary, I find that a majority of the employees in the unit that I've earlier described on or about

March 14, 1997 designated and selected the union as their collective bargaining representative and that the urn on made a demand of the Company that the Company recognize them; that the Company by its actions did recognize the Union; and that the Company, thereafter, in violation of section 8(a)(5) and 1 of the Act, refused and continues to refuse to recognize and bargain with

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the Union.

I, therefore, order that the Company recognize Local Union 177 of the IBEW as the collective bargaining representative of the employees in the group that I have read into the record and that is described at paragraph five of the complaint. And that upon demand, it bargain in good faith with the Union regarding the wages, hours and working conditions of the unit employees. And if any agreement is arrived at, reduce same to writing and execute it.

Now when I receive the transcript of this proceeding, I will certify the pages of the transcript that constitute my decision to the Board and will serve it not only on the Board, but on the parties. And I will set forth a more detailed remedy—I will set forth the notice that will need be posted. And it is my understanding that the appeals period for taking exceptions to my decisions runs from the certification of the decision—that is from when I issue my decision certifying the transcript pages as my decision. That is my understanding as to when the appeals period commences.

Please do not, however, rely on my understanding. Consult the Board's rules and regulations. The court reporter normally provides the transcript to me within 10 working days of the conclusion of the trial. And then absent my being on the road trying other cases, I make an effort to certify the decision as soon thereafter as I can.

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Let me state in conclusion that it has been a pleasure to be in Jacksonville, Florida and this hearing is closed.

Off the record.

(Whereupon, the hearing was adjourned at 12:40 p.m.)